Contingency Environmental Law

Operations Law Course 01-A

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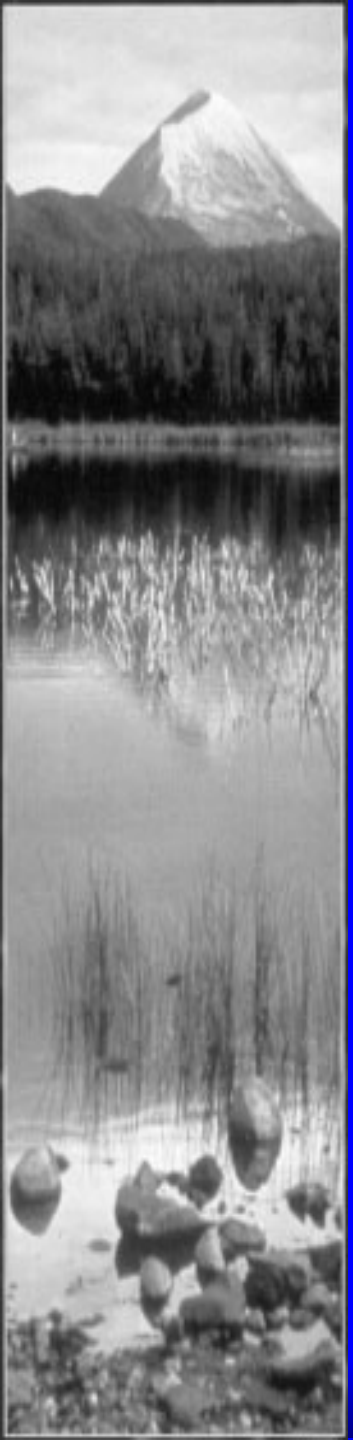
Air Force Judge Advocate General School



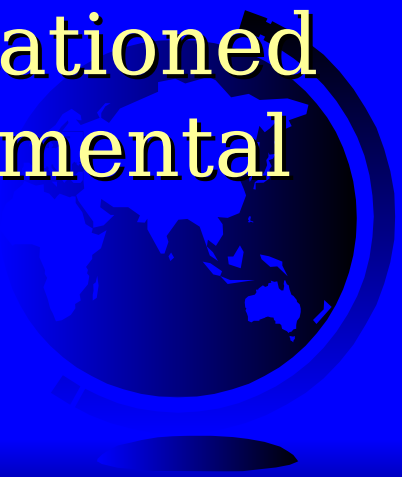
OVERVIEW

- Background
- Deployments
- International Law & Treaties
- Overseas Environmental Compliance*
- Overseas Environmental Restoration*
- Overseas Environmental Planning*
- Guidance
- Summary

BACKGROUND

- Where does the guidance come from?
  - International agreements*
  - Executive Orders*
  - DOD Directives and Instructions*
  - Host Nation Law*
  - US Law/domestic standards
- Depending on where you're stationed and why you're there, environmental guidance will change

* = more influential



BACKGROUND (Con'd)

- W/N United States: domestic laws apply
- Overseas: Generally no application
- Also need to distinguish between:
  - Overseas installation operations (EO 12088/12114)

    AND
  - Contingency Operations

BACKGROUND (Con'd)

Controlling Standard	Mission
C Domestic Law	✦ Training Deployments
O ‖	– W/N United States
N Dom.&Host Nat. Law	– O/S United States
T DOD Guidance	✦ Contingencies
I Int'l Law	– Aviano AB, Italy
N ‖	– Bosnia/Kosovo
U ‖	– Kuwait/KSA
U ‖	
M LOAC	✦ Shooting War

BACKGROUND (Con'd)

- Compliance - EO 12088 & DODI 4715.5
  - Stricter US/Host Nation Standard
  - OEBGD or FGS
- Restoration - DODI 4715.8
- Planning - EO 12114 & DODD 6050.7
  - NEPA-like requirements

- NOTE: Contingencies, e.g., peacekeeping, peace enforcement, etc., typically exempted

DEPLOYMENTS

DEPLOYMENTS

- For deployments to locations other than DOD overseas installations/facilities, look to:
  - Annex L to OPLAN
  - Joint Pub 4-04, *Joint Doctrine for Civil Engineering*
  - SOFAs
  - Service Regs
    - AFI 32-7006, *Environmental Program in ForeignCountries*
    - AFI 32-7061, *Environmental Assessment Impact Program*

DEPLOYMENTS

- Such deployments exempted from planning, compliance and restoration requirements found in E.O. 12114, OEBGD & FGS
- Annex L to OPLAN establishes environmental requirements for deployments
- Covers each phase of the operation
- Mission support requirements

DEPLOYMENTS

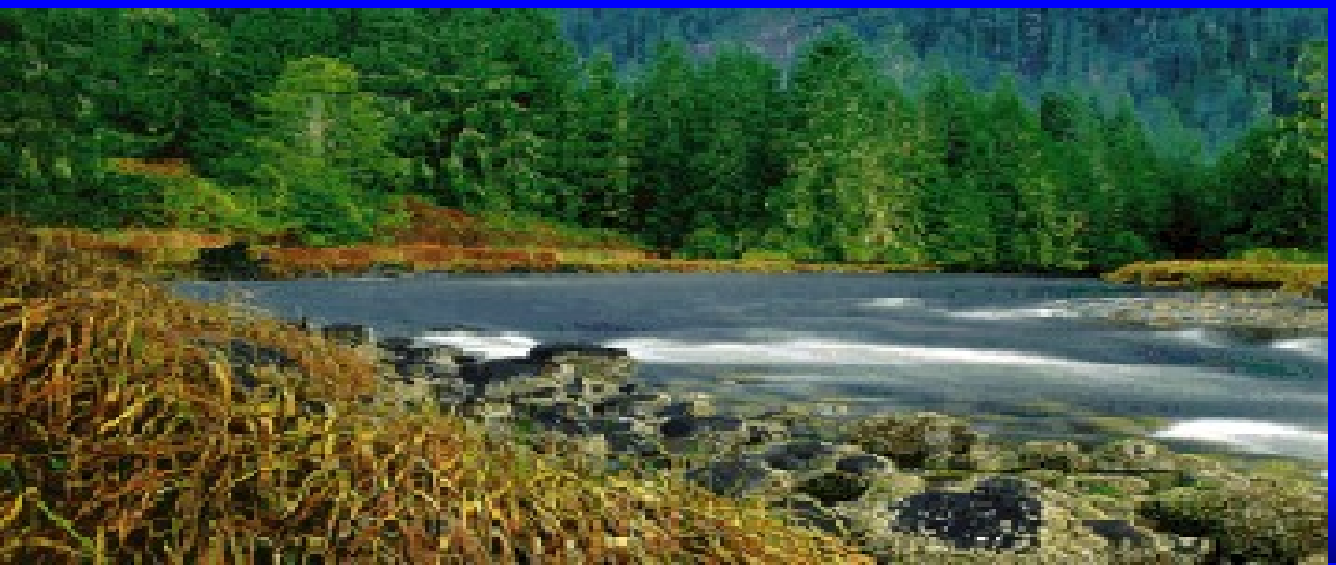
- Joint Operation Planning and Execution System (JOPES)
- Mandatory Format for Operations Plan (OPLAN) and Operations Order (OPORD)
  - Annex L, Planning Guidance - Environmental Considerations
    - Follow Jt Pub 4-04 for more detailed guidance

DEPLOYMENTS

- Environmental Plan Must Address at a minimum:
  - Certification of Local Water Sources by Medical Field Units
  - Solid and Liquid Waste Management
    - Open Dumping
    - Open Burning
    - Disposal of Gray Water, Pesticides, Human Waste, Hazardous Waste

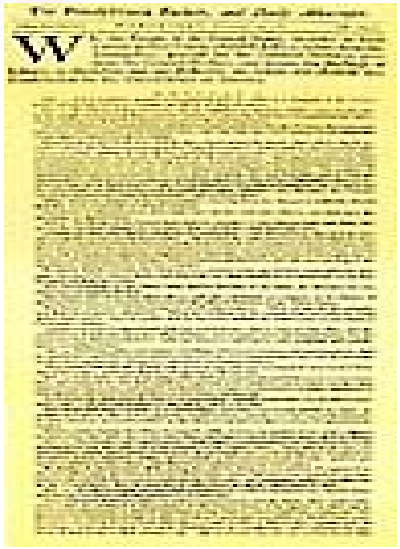
DEPLOYMENTS

- Env. Plan (Con’d)
  - Hazardous Materials Management including the Potential Use of Pesticides
  - Flora and Fauna Protection
  - Archeological and Historical Preservation
  - Base Field Spill Plan



DEPLOYMENTS

- Env. Plan (Con’d)
  - Disposal of HW and personal property
    - Defense Logistics Agency (DLA)
  - Two required appendices:
    - Environmental Assessments
    - Environmental Assessment Exemptions



INTERNATIONAL LAW & TREATIES

TREATIES

- Generally ambiguous, unless they specifically address the environment
  - Geneva/Hague Conventions
- Environmental protection treaties:
  - Basel Convention
  - Environmental Modification (1980)
  - Chemical Weapons Convention (1997)
  - Maritime Pollution Convention
  - Ocean Dumping Convention
  - 1977 Protocols Additional to Geneva Convention

Environmental Protection Treaties

Basel Convention

- Governs trans-boundary movement of HW
- Prohibits movement of HW from party state to non-party state w/o separate agreement (Art 11)
- U.S. has not ratified
- Ratifying parties include U.K., Japan, Saudi Arabia

Environmental Protection Treaties - Impact of Basel on DoD

- None with in-country disposal
- None with returning to US
- If “trans-boundary shipment” of HW *“through”* other countries on U.S. vessels or aircraft . . .

- NOTE: SOFA agreement deemed to be Article 11 agreement

Environmental Protection Treaties (Con'd)

Environmental Modification Convention (1980)

- Bans environmental manipulation as a weapon
- Bans widespread, long lasting or severe effects to the environment

Chemical Weapons Convention (1997)

- Bans wartime use of chemicals (herbicides)
- EO 11850 (re 1925 Geneva Gas Protocol) allows use for (1) domestic use (2) control vegetation around "immediate defensive perimeters"

Environmental Protection Treaties (Con'd)

Marine Pollution (MARPOL) Convention

- Regulates "vessel source pollution"
- Implemented by Act to Prevent Pollution from Ships, 33 USC 1901 et. seq.

London Dumping Convention

- Dumping land waste at sea
- Ocean Dumping Act, 33 USC 1401 et. seq. (Marine Protection, Research & Sanctuaries Act (1972))

Contingency Operations - Traditional Law of War

Hague Conventions (Methods of War)

- Unnecessary suffering
- Military necessity
- Iraq oil fires?

Fourth Geneva Convention

- Art 53 bans destruction by Occupying Power of property in absence of clear military necessity

Contingency Operations - Developing Law

1977 Protocols Additional to GC (No. 1)

- US Ratification not expected; most allies are signatories
- Physical environment addressed
- Removes traditional balancing of proportionality vs. military necessity

Contingency Operations Developing Law (Con'd)

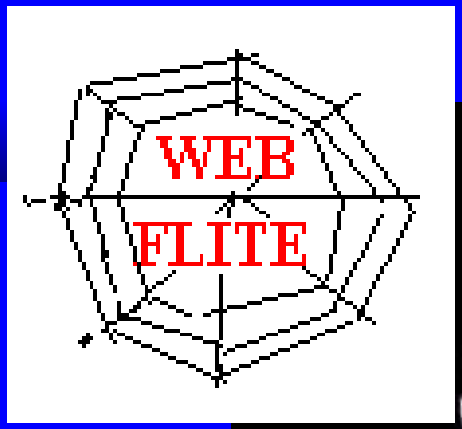
- Art 35, para 3
  - "it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment."
- Art 55 - Protection of the natural environment
  - Prohibition aimed at protecting the "health or survival of the population"
  - No reprisals

OS ENVIRONMENTAL COMPLIANCE

OS ENVIRONMENTAL RESTORATION

OS ENVIRONMENTAL PLANNING

WEBSITES & GUIDANCE



WEBSITES

- DENIX (ID and password required) (www.denix.osd.mil/denix/Intl/intl.html)
- USAF/JACE (FLITE access required) (aflsa.jag.af.mil/GROUPS/AIR_FORCE/ENVLAW)
  - International Issues Link (FGS, OEBGD, Deskbook)
- USAF Pub Website:

  (afpubs.hq.af.mil/pubs/majcom.asp?org=AF)
- ARMY Pub Website

  (www.usapa.army.mil/gils/)

GUIDANCE

- Two Army Lawyer articles: Environmental Aspects of O/S Operations (Apr 95) & Environmental Aspects of O/S Operations: An Update (Jul 97)
- AFH 10-222, V4, *Environmental Guide For Contingency Operations* (hard copy only)
- Course CD
- MAJCOMs
- Unified Commands

SUMMARY

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Questions?